

certifications pursuant to SOX, signed by Xiaoming and Wang, which were the same or substantially similar to the SOX certifications described above.

81. According to the Securities Class Actions, on March 15, 2016, *Caixin*, a Chinese financial journal (*supra* note 2), published an article reporting that the Chinese government was investigating EV manufacturers and local officials that may have defrauded the Chinese government of millions of dollars in subsidies through a scheme whereby manufacturers were selling vehicles to their own rental subsidiaries. The investigation specifically targeted Kandi and other EV manufacturers engaged in similar business practices as Kandi.

82. On May 10, 2016, the Company filed its quarterly report on Form 10-Q with the SEC for the quarter ended March 31, 2016 (the “Q1 2016 10-Q”), in which the Company reported net income of \$90,000, or \$0.00 per diluted share, on revenue of \$50.66 million, compared to net income of \$6.13 million, or \$0.13 per diluted share, on revenue of \$43.78 million for the same period in the prior year.

83. The Q1 2016 10-Q stated, in pertinent part:

**Evaluation of Disclosure Controls and Procedures**

We have evaluated, under the supervision of our Chief Executive Officer (“CEO”) and our Chief Financial Officer (“CFO”), the effectiveness of disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the “Exchange Act”)) as of March 31, 2015. ***Based on this evaluation, our CEO and CFO concluded that as of the end of the period covered by this report, our disclosure controls and procedures were effective.***

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act (a) is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms and (b) is accumulated and communicated to management, including our CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure. Our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their

objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives as described above.

### **Changes in Internal Control over Financial Reporting**

There was no change to our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the period covered by this report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

84. The Q1 2016 10-Q was signed by defendants Xiaoming and Wang and contained certifications pursuant to SOX, signed by defendants Xiaoming and Wang, which were the same or substantially similar to the SOX certifications described above.

85. On August 9, 2016, the Company filed its quarterly report on Form 10-Q with the SEC for the quarter ended June 30, 2016 (the “Q2 2016 10-Q”), in which the Company reported net income of \$2.79 million, or \$0.06 per diluted share, on revenue of \$55.22 million, compared to net income of \$5.43 million, or \$0.12 per diluted share, on revenue of \$47.96 million for the same period in the prior year.

86. The Q2 2016 10-Q stated, in pertinent part:

### **Evaluation of Disclosure Controls and Procedures**

We have evaluated, under the supervision of our Chief Executive Officer (“CEO”) and our Chief Financial Officer (“CFO”), the effectiveness of disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the “Exchange Act”)) as of June 30, 2016. ***Based on this evaluation, our CEO and CFO concluded that as of the end of the period covered by this report, our disclosure controls and procedures were effective.***

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act (a) is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms and (b) is accumulated and communicated to management, including our CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure. Our management recognizes that any controls and procedures, no matter how well

designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Our disclosure controls and procedures are designed to provide

### **Changes in Internal Control over Financial Reporting**

There was no change to our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the period covered by this report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

87. The Q2 2016 10-Q was signed by defendants Xiaoming and Wang and contained certifications pursuant to SOX, signed by defendants Xiaoming and Wang, which were the same substantially similar to the SOX certifications described above.

88. On November 2, 2016, the Company filed its proxy statement on Form DEF 14A with the SEC for the 2016 annual meeting of shareholders (the “2016 Proxy”). In connection with long-term equity compensation granted to the Company’s executive management and/or directors, the 2016 Proxy disclosed that “[o]n April 23, 2015 and June 7, 2015, the Company granted 550,000 shares and 120,000 shares, respectively, to the senior management and key employee as year 2014 performance awards.” In connection with the stock awards received by the Company’s directors and/or named executive officers for 2015, the 2016 Proxy failed to disclose material information concerning, among other things, that certain of the Company’s previously issued financial statements required adjustment and in turn, the Company lacked effective internal controls over financial reporting. The 2016 Proxy omitted material information concerning the Company’s true performance, which is tied directly to the directors’ and officers’ compensation.

89. On November 9, 2016, the Company filed its quarterly report on Form 10-Q with the SEC for the quarter ended September 30, 2016 (the “Q3 2016 10-Q”), in which the Company reported a net loss of \$570,000, or \$0.01 per diluted share, on revenue of \$6.37 million, compared

to net income of \$2.34 million, or \$0.05 per diluted share, on revenue of \$50.53 million for the same period in the prior year.

90. The Q3 2016 10-Q stated, in pertinent part:

**Evaluation of Disclosure Controls and Procedures**

We have evaluated, under the supervision of our Chief Executive Officer (“CEO”) and our Chief Financial Officer (“CFO”), the effectiveness of disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the “Exchange Act”)) as of September 30, 2016. *Based on this evaluation, our CEO and CFO concluded that as of the end of the period covered by this report, our disclosure controls and procedures were effective.*

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act (a) is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms and (b) is accumulated and communicated to management, including our CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure. Our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives as described above.

**Changes in Internal Control over Financial Reporting**

There was no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the period covered by this report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

91. The Q3 2016 10-Q was signed by defendants Xiaoming and Wang and contained signed certifications pursuant to SOX, signed by defendants Xiaoming and Wang, which were the same or substantially similar to the SOX certifications described above.

92. Throughout the Relevant Period, the Company filed financial reports (described above) and the 2015 and 2016 Proxy Statements which contained false and misleading information

and/or omitted material information, such that the Company had to readjust its public filings concerning the following categories of information: (i) audited financial statements for the Company's equity investment in the Joint Venture; (ii) the classification of notes receivable and notes payable in the Company's statements of cash flow and certain related party accounts on the face of the Balance Sheets and the Consolidated Statements of Income (Loss) and Comprehensive Income (Loss); (iii) Note 20 – Taxes of the Notes to the Company's Consolidated Financial Statements; (iv) Note 16 - Construction-in-Progress of the Notes to the Company's Consolidated Financial Statements; (v) Note 24 - Summarized Information of Investment in the Joint Venture of the Notes to the Company's Consolidated Financial Statements from two years to three years; (vi) Note 20 - Taxes of the Notes to the Company's Consolidated Financial Statements; and (vii) the Company's unaudited quarterly data for the first three quarters ended December 31, 2016.

93. Also on November 9, 2016, *The Motley Fool* published an article after Kandi's disappointing third-quarter earnings report which also described the state of subsidies for EV manufacturers in China.<sup>9</sup> The article stated, in pertinent part:

**Why Shares of Kandi Technologies Fell Over 10% This Morning**

Kandi's third-quarter results were clobbered after an important subsidy was held up by the Chinese government

**What happened**

Shares of Chinese electric-vehicle maker **Kandi Technologies** (NASDAQ:KNDI) fell sharply on Wednesday morning. As of 11:45 a.m. EST, Kandi's shares were trading at \$3.97, down 10.7%.

**So what**

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<sup>9</sup> John Rosevear, *Why Shares of Kandi Technologies Fell Over 10% This Morning*, The Motley Fool (Nov. 9, 2016), available at <https://www.fool.com/investing/2016/11/09/why-shares-of-kandi-technologies-fell-over-10-this.aspx>.

Kandi's third-quarter earnings report was released before the bell, and it was a disaster. Revenue fell over 87% to just \$6.4 million, and it lost almost \$600,000 after making \$2.3 million a year ago.

What happened? Kandi's primary business involves selling electric-vehicle parts to an electric-car joint venture it owns with automaker **Geely Automobile Holdings** (NASDAQOTH:GELYF). It's heavily dependent on subsidies provided by the Chinese government to spur the development of electric vehicles. But a big subsidy payment has been held up while the government investigates fraud allegations across the industry.

As CEO Hu Xioming explained on Wednesday:

*China's central government preceded a review on the subsidies paid to all the EV manufacturers, which caused the 2015 subsidy payments remain unpaid industrywide.* The delay in subsidy payment heavily impacted the JV Company's production and sales, which resulted in a significant decrease in our EV parts sales.

The investigation has already borne fruit. *In September, five of Kandi's rivals were fined and removed from the list of companies eligible for subsidies.*

94. On November 14, 2016, Kandi announced the resignation of defendant Wang as CFO, and the appointment of defendant Mei as Kandi's new CFO.

#### **The Truth Begins to Emerge**

95. The truth began to emerge on March 13, 2017, when the Company filed a current report on Form 8-K with the SEC, which stated, in pertinent part:

##### **Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review.**

(a) During the course of Kandi Technologies Group, Inc.'s (the "Company") preparation of its Annual Report on Form 10-K for the year ended December 31, 2016, and during preparation of responses to comments from the staff of the Securities and Exchange Commission ("SEC"), Division of Corporate Finance, *the Company's management identified certain areas in the Company's previously issued financial statements for the years ended December 31, 2015 and 2014, and the first three quarters for the year ended December 31, 2016 (the "Previously Issued Financial Statements"), that require adjustment as described below and in more detail in the Company's annual report on Form 10-K/A for the fiscal year ended December 31, 2015 ("Form 10-K/A"), to be filed with the SEC. As a result, on March 7, 2017, the board of directors (the "Board") of the Company,*